

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

MICHAEL A. PAYNE,	)	CASE NO. 5:09 CV 111
	)	
Petitioner,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	<u>MEMORANDUM OF OPINION</u>
RICHARD HALL,	)	<u>AND ORDER</u>
	)	
Respondent.	)	

On January 15, 2009, petitioner pro se Michael A. Payne filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Payne is incarcerated in an Ohio penal institution, having been convicted of menacing by stalking. He challenges his conviction on the ground that the indictment was invalid. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

Even assuming Payne were asserting a federal constitutional issue properly preserved in the state court, it is

evident on the face of the petition that he has yet to appeal his conviction. Thus, at the very least, he may still pursue a delayed appeal under Ohio Appellate Rule 5.

Accordingly, the request to proceed in forma pauperis is granted and this action is dismissed without prejudice for failure to exhaust state court remedies pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability, Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

S/Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE

March 11, 2009